

ETHICS INTERPRETATION EI-1996-008
ISSUED September 27, 1996

In the executive session portion of its regular meeting held September 27, 1996, the Ethics Commission considered your request for an ethics interpretation. You have asked:

1. *Is an educational institution of the Oklahoma State System of Higher Education ["State System"] a "person" within the meaning of the definition of the term contained in Section 257:1-1-2 of the Constitutional Ethics Rules ["the Rules"], Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S.Supp.1996, Ch. 62, App.?*
2. *If so, is a State System educational institution subject to the reporting requirements contained in Section 257:23-1-3 of the Rules?*
3. *If so, is the value of complimentary tickets to college or university events given to members of the Legislature or the Executive Branch of state government required to be reported by the State System educational institution under Section 257:23-1-3 of the Rules?*

FACTS

You have advised that State System educational institutions routinely provide members of the Legislature and the Executive Branch of state government complimentary tickets to college and university events. You question whether these should be reported to the Commission on the Lobbyists and Other Persons Gift Report ["Form L-3"].

By way of background, the Commission notes that from July 1, 1994 through July 1, 1995, Legislators and other state officials reported receipt of complimentary tickets when they exceeded \$50 in the aggregate in a calendar year. This reporting was required by former provisions of Section 257:20-1-9(c), which provided for recipient reporting. The latter was repealed effective July 1, 1995, leaving the giver as the sole reporter of things of value under the Rules.

ANALYSIS

The Rules, at Section 257:20-1-9(b), prohibit giving or receiving anything of value in excess of \$300 in a calendar year from lobbyists, lobbyist principals, and those who do or seek to do business with the governmental entity for which the officer/employee works or have a substantial financial interest in matters pending before or affecting the governmental entity of which the officer's/employee's office or employment is a part. The Rules require lobbyists and **certain other persons** to report things of value from, or on behalf of, these sources which are given to state officers/employees, or their immediate family members, when they exceed \$50 in the aggregate in value in any six month period [January 1 to June 30 or July 1 to December 31]

These other persons are defined.

Definitions

* * *

"Person" means an individual, corporation, association, proprietorship, firm, partnership, limited partnership, joint venture, joint stock company, syndicate, business trust, estate, trust, company, organization, committee, or club, or a *group of persons who are voluntarily acting in concert*.

* * *

257:1-1-2

[emphasis added]

The Rules require reports from these "persons" as well as lobbyists:

Things of value to state officers or state employees of regulatory governmental entities

Any person who:

- (1) is employed or retained by another for financial or other compensation to perform services that include promoting, opposing or attempting to influence any executive or administrative action by a governmental entity, including, but not limited to, the promulgation of rules and regulations and the setting of rates, other than an individual whose lobbying activities are only incidental to, and are not a significant part of, the services provided by such individual to the client;
- (2) is seeking to do business or doing business with a governmental entity;
or
- (3) *has a substantial financial interest in actions or matters before or affecting a governmental entity;*

shall be required to file, by paper form or computer diskette, or electronically transmit the same report required to be filed by lobbyists by Section 2 of this chapter if, and only if, such person gives anything or things of value to a state officer or state employee the cost of which exceeds fifty dollars (\$50.00) in the aggregate during a six-month period beginning January 1 and ending June 30 or beginning July 1 and ending December 31. Electronic filings shall be followed by delivering, mailing or faxing a signed and notarized paper copy of the form. This provision shall not apply, however, to things of value received as a result of or arising out of employment by, or doing business with, a lobbyist or lobbyist principal; and things of value received from any director, stockholder, partner, agent, affiliate, member, employee or officer of a lobbyist principal as a result of a personal or casual relationship with the recipient. Provided further, this provision shall not apply to things of value given to a public member when not given as a result of the public member's status as a public member.

257:23-1-3

[emphasis added]

Your first question is whether a State System educational institution is a "person" within the meaning of this provision. Black's Law Dictionary defines a "university" as a "[w]hole body of teachers and scholars, engaged at a particular place in giving and

receiving instruction in higher branches of learning; also such persons, associated together as a society or corporate body with definite organization and acknowledged powers and privileges, especially of conferring degrees, and forming an institution for the promotion of education in higher and more important branches of learning. [*Black's Law Dictionary* Revised Fourth Edition, citing *West v. Board of Trustees of Miami University and Miami Normal School*, 41 Ohio App. 367, 181 N.E. 144, 149] The State System is thus “a group of persons who are voluntarily acting in concert” in a college or university setting.

The Rules' definition includes “a group of persons who are voluntarily acting in concert.” The term is and was meant to be all inclusive. While “governmental entity” is defined to include a State System educational institution and could have been included in the definition, the absence of its specific inclusion in the definition of “person” does not remove it if it fits a broader category. To argue otherwise would be to ignore the makeup of the institution. The Commission thus finds that a State System educational institution is a person for purposes of the definition.

Your second question is whether a State System educational institution is subject to the reporting requirements of Section 257:23-1-3. Persons required to report include those with “a substantial financial interest in actions or matters before or affecting a governmental entity.” A State System educational institution, which owes its existence and operation to legislative appropriations, has an interest in matters before the Legislature. In Oklahoma, the State System is appropriated in excess of \$500 million per year. The Commission considers that to be a substantial sum and therefore finds that the State Systems' annual appropriation qualifies as a “substantial financial interest”.

Your third question is whether the value of complimentary tickets given to members of the Legislature or the Executive Branch is required to be reported by the State System educational institution under Section 257:23-1-3. In drafting the provisions for the 1994 Rules, the Commission purposely inflated the annual ceiling on gifts to allow for complimentary athletic tickets. It has always been the Commission's view that these items are “things of value” which are to be reported. In fact, during the period of recipient reporting, certain university tickets were the single most commonly reported items.

Subsequent amendments in the rules underscore the Commission's intent with respect to reporting of these items. When recipient reporting was repealed in favor of donor reporting only, lobbyists and lobbying were redefined to exclude “lobbying” most governmental entities in the executive branch. In revising these provisions, the Commission noted that reporting would still be done by “persons” giving such things of value under Section 257:23-1-3 if they fit within the aforementioned three groups.

CONCLUSION

It is therefore the ethics interpretation of the Ethics Commission, as decided at its regular meeting held September 27, 1996, that:

- 1. An educational institution of the State System is a “person” within the meaning of the definition of the term contained in Section 257:1-1-2 of the Rules;**
- 2. Such state educational institution is subject to the reporting requirements contained in Section 257:23-1-3 of the Rules; and**
- 3. The value of complimentary tickets to college or university events given to members of the Legislature or the Executive Branch of government by an educational institution of the State System is required to be reported by the institution when the value exceeds \$50 in the aggregate in a six-month period [January 1 through June 30 and July 1 through December 31] under Section 257:23-1-3 of the Rules.**

Please be advised that ethics interpretations are published with sufficient deletions to prevent identification of the person or persons involved in the situations presented in the ethics interpretation.